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Judicial Profiles to Better Understand the
Supreme Court

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We citizens know a lot about our presidents—their background, philosophy, and character—and sometimes more than we care to know. The same is true of our congressional representatives. By comparison, we know relatively little about our Supreme Court Justices. This needs to change.

A better, indeed, more fully informed historic understanding of the views, experiences, temperament, and character of the men and women that have served on the nation's High Bench will, in the name of civic education, expand the citizenry's knowledge of an institution that has exceeded the Framers' minimal expectations of the impact of the judiciary on American life.

Since Aristotle, we have known that people shape institutions and institutions shape people. The views and values of the 116 people who have served on the Supreme Court, an independent institution laboring under few checks and balances, have profoundly shaped American lives and the life of our nation. The temperament, ambition, personality quirks, rivalries, judicial philosophies, and ideology of just nine members—the size of the Court set by Congress in the early 1900s—can exert great power in changing the institution of the judiciary and, thus, the meaning of the Constitution.

The Court as an institution can, and does, influence the behavior of the Justices. Its rules and traditions, for example, shape the interaction of the Justices. The Rule of Four—the number of Justices necessary to grant a Writ of Certiorari—requires adaptation to the Court's norms of behavior in order to win support from a recalcitrant judge who, if alienated by personal attacks by a fellow Justice, might not be willing to vote to hear a case. It was with good reason that Justice Oliver Wendell Holmes famously characterized his colleagues as "nine scorpions in a bottle." Thus, the institutional norms of collegiality and tolerance shape behavior, but occasionally give way to nasty fights that become public and accusations that expose the fissures within the Court and the juvenile nature of some of its members.

Justice James McReynolds, a notorious antisemite, refused to dine with Justices Louis Brandeis and Benjamin Cardozo, both of whom were Jewish.

In the mid-1940s, the bitter rivalry and fight between Justices Hugo Black and Robert H. Jackson, stemming from personal ambition and absence of goodwill, plunged the Court into a storm that forced members to choose sides.

In the early 1970s, Chief Justice Warren Burger manipulated the Court's method for voting on cases in order to place himself in the majority so he could write the Court's opinion, even though his views were at odds with those who formed the majority. He ceased his behavior only when Justice William O. Douglas, after reminding his colleagues of the rules governing voting, threatened to expose Burger's manipulative acts with a letter to the press.

A single Justice's temperament, political skills and vision for America, however, can unite the Court, overturn pernicious precedents and craft an opinion

that changes the course of America. Chief Justice Earl Warren, who possessed leadership and political skills nearly unrivaled in the Court's long history, along with a warm and congenial personality, brought discordant voices to a unanimous opinion in *Brown v. Bd. of Education* (1954) and held that segregation in public schools violated the Equal Protection Clause of the 14th Amendment.

Chief Justice John Marshall, widely regarded as the greatest Justice in our history, brought warmth, charm, a convivial personality and, most of all, a down-to-earth sincerity to the bench. Far from being viewed as manipulative and pretentious, he was regarded by his colleagues as authentic. His close friend, Justice Joseph Story, the most scholarly of Justices, said of Marshall: "I love his laugh—it is too hearty for an intriguer."

It was Marshall who convinced his colleagues to room and dine together while they performed their duties on the Court. He brought wine to dinner—his beloved Madeira—and created an institutional atmosphere that set the tone for the work of the Court for decades to come.

To understand the Supreme Court—its history, work, and role in American politics—is to understand those who have donned black robes and taken seats in the Marble Palace. It is especially important at this juncture, when members of the Court are ensnared in public controversies—for their votes, speeches, and scandals—for the citizenry to understand who these men and women are. What is the content of their portfolios? What did they do before winning appointment to the Court? What judicial vision and philosophy did they articulate? And, of course, what were their highs and lows as Supreme Court Justices?

With very few exceptions, no appointee to the Supreme Court possessed greater experience than John Jay, the first Chief Justice of the Supreme Court. We begin next week with a profile of Jay, President George Washington's first judicial appointment.